



In the Matter of:

DON JONES,

ARB CASE NO. 97-009

COMPLAINANT,

ALJ CASE NO. 96-STA-1

v.

DATE: January 13, 1997

**CONSOLIDATED PERSONNEL
CORP.,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

FINAL DECISION AND ORDER

Before us for review is the Recommended Decision and Order (R. D. and O.) issued on October 7, 1996 by the Administrative Law Judge (ALJ) in this case arising under the employee protection provision of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C.A. § 31105 (West 1994)^{2/}. Complainant Don Jones (Jones) alleges that Respondent Consolidated Personnel Corporation (Consolidated) violated the STAA by firing him for refusing to drive when fatigued and because of his complaints regarding the safety of vehicles that he was assigned to operate.

The ALJ found that Jones did not engage in protected activity and that Consolidated did not violate the employee protection provision of the STAA. The ALJ's findings of fact are supported by substantial evidence on the record as a whole and therefore are conclusive. 29 C.F.R. § 1978.109(c)(3)(1995).

^{1/} On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute to the newly created Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996). Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Administrative Review Board now issues final agency decisions. Final procedural revisions to the regulations implementing this reorganization were also promulgated on that date. 61 Fed. Reg. 19982.

^{2/} We note that the ALJ referred to the STAA at its old United States Code citation; the current citation is 49 U.S.C.A. § 31105 (West 1996).

Since this case was fully tried on the merits, it was not necessary for the ALJ to engage in an analysis of whether Jones presented a *prima facie* case. *U.S.P. S. Bd. of Governors v. Aikens*, 460 U.S. 711, 713 (1983); *Carroll v. Bechtel Power Corp.*, Case No. 91-ERA-0046, Final Dec. and Order, Feb. 15, 1995, slip op. at 11 n. 9, *aff'd sub nom. Bechtel Corp. v. U.S. Dep't of Labor*, 78 F.3d 352 (8th Cir. 1996)(under the Energy Reorganization Act). Once Consolidated produced evidence that Jones was subjected to adverse action for a legitimate, nondiscriminatory reason, the answer to the question whether a *prima facie* case was presented is no longer useful. If Jones has not prevailed by a preponderance of the evidence on the ultimate question of liability it matters not at all whether he presented a *prima facie* case.

In all other respects the ALJ's decision is well reasoned and correct on the law. Therefore, we adopt the attached R. D. and O., and this complaint is DISMISSED.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member